THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NOs.260, 263 and 386 of 2005

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14th March 2006

1. W.A.No.260 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 10.11.2004 in W.P.NO.21603 OF 2000 on the file of the High Court.)

Between:

A.P.State Co-operative Marketing Federation Ltd., (A.P.Markfed), Rep.by its Managing Director, 7th Floor, Parishram Bhavan, Basheerbagh, Hyderabad.

...APPELLANT

AND

Sri K.Yagantaiah, S/o.Bhujangarao, 63 years, R/o.Journalists Colony, Jubilee Hills,

Hyderabad.

...RESPONDENT

And batch.

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NOs.260, 263 and 386 of 2005

COMMON JUDGMENT: (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard both the sides

At their request, all these three Writ Appeals are taken up for disposal at the admission stage.

Since common question arises in all the three Writ Appeals, they are taken up together for disposal.

These appeals are at the instance of the A.P.State Cooperative Marketing Federation Ltd., (A.P. Markfed) wherein they seek to assail the orders allowing the Writ Petitions filed by the writ petitioners, who are the respondents in these three

appeals as against the action of continuing the disciplinary proceedings subsequent to the retirement of the petitioners.

The facts, which are necessary for disposal of all these three appeals, are that in W.A.No.260 of 2005, as against the respondent/employee, on certain allegations, a charge memo was issued on 19.06.2000 numbering to about ten items and thereafter, disciplinary enquiry was initiated on 28.06.2000. However, after two days, the employee retired on 30.06.2000 on attaining the age of superannuation. Yet, he filed an explanation on 30.06.2000. Subsequently, an Enquiry Officer was appointed and enquiry is being conducted. In W.A.No.263 of 2005, on certain allegations, after issuance of show cause notice dated 20.05.1993, the respondent/employee was placed under suspension on 16.10.1993. After filing explanation on 27.10.1995 and on of the direction issued by this Court in an earlier Writ Petition being W.P.No.2447 of 1996 dated 19.12.1996, enquiry was initiated. However, on 31.07.1998, the respondent/employee retired on attaining the age of superannuation. In W.A.No.386 of 2005, the respondent/employee, on certain allegations, was placed under suspension on 02.02.2000 and after submission of his explanation on 12.03.2000, charges were framed and the Joint Registrar was appointed as Enquiry Officer on 23.05.2000. However, the matter went on and subsequently, additional charges were framed on 08.09.2000 to which, the respondent filed explanation. In the meanwhile, the respondent retired on 31.05.2000 on attaining the age of superannuation.

Challenging the continuity of disciplinary proceedings, the respondents/employees filed three Writ Petitions filed on the ground that having regard to the principles laid

down by the Apex Court in ***Bhagirathi Jena v. Board of Directors, O.S.F.C***, no proceedings as such could be continued subsequent to the retirement. The learned Single Judge found favour with the submissions made on behalf of the respondents/employees and allowed the three Writ Petitions through common order dated 10.11.2004 holding that there is no specific provision for continuation of disciplinary proceedings beyond the date of retirement.

The learned counsel for the appellant submits that though there is no specific provision as such and having regard to the Regulations 75 and 78, there is ample indication impliedly to show that the proceedings could be continued even after the retirement and therefore, mere absence of specific provision as such cannot in any way vitiate the proceedings and the same can be validly continued. He sought to place reliance on the decision of the Apex Court in ***Union of India v. Ajoy Kumar Patnaik***, wherein it was held that mere retirement of the officer by efflux of time pending proceedings would not be a ground to close the matter.

The learned counsel for the respondents/employees submits that having regard to the specific findings in the later judgment of the Apex Court in ***Bhagirathi Jena v. Board of Directors, O.S.F.C*** (1 supra), there is no specific provision for continuing the disciplinary proceedings even after retirement as observed in the said decision.

Having considered the submissions made and on perusal of the material available on record and after giving serious consideration to the same, the question that arises for consideration is as to whether under the facts and circumstances, any

departmental proceedings could be validly continued against the employee even after the retirement.

There is no dispute in regard to the basic facts and the chequered events as pointed out above. The employees were placed under suspension, charges were framed and departmental proceedings were initiated by appointing Enquiry Officer before attaining the age of superannuation. However, before the completion of the said enquiry against the three employees, they retired, though observing subject to the continuance of the disciplinary proceedings as observed in the proceedings. In para Nos.6 and 7 of ***Bhagirathi Jena v. Board of Directors, O.S.F.C*** (1 supra), the Apex Court held as under.

> It will be noticed from the above said regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.
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> In view of the absence of such a provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retrial benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that incase misconduct is established, a deduction could be made from retrial benefits. Once the appellant had retired from service on 30.06.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retrial benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

In view of the aforesaid principles, it is quite amply clear that necessarily there has to be a specific provision providing continuance of the disciplinary proceedings subsequent to the retirement. In this connection, it is relevant to note the Regulations, which have been strongly placed reliance, namely Regulations 75

and 78, which read as follows:

75. **0.0. <u>Reinstatement After Suspension:</u>**

75. 1.0. When an employee who has been suspended is reinstated or would have been so reinstated but for his retirement or superannuation, while under suspension, the authority competent to order reinstatement shall consider and made a specific order,

a. Regarding the pay and allowances to be paid to the employee for the period of suspension ending with reinstatement or the date of retirement on superannuation, as the case may be: and

b. Whether or not the said period shall be treated as a period spent on duty.

78. **0.0. <u>Reinstatement After Dismissal or Removal or Compulsory Retirement.</u>**

78. 1.0. When an employee who has been dismissed, removed, or compulsorily retired is reinstated as a result of appeal or would have been reinstated but for his retirement on superannuation while under suspension preceeding the dismissal, removal or compulsory retirement, the authority competent to order reinstatement shall consider and make a specific order:

a. Regarding the pay and allowances to be paid to the employee for the period of his absence from duty including the period of suspension preceeding his dismissal, removal or compulsory retirement as the case may be and

b. Whether or not the said period shall be treated as period spent on duty.

No doubt, on reading the aforesaid provision, it contemplates for consequent action to be taken in the follow up of disciplinary proceedings after attainment of age of superannuation. However, admittedly, there is no specific regulation for providing continuance though the aforesaid both regulations cover a situation of post retirement. The absence of provision is most telling. As held in the later judgment of the Apex Court in ***Bhagirathi Jena v. Board of Directors, O.S.F.C*** (1 supra), there being no specific provision, no power is left with the employees. And, the source of power cannot have its genesis on mere presumptions. From reading any other provision, where a situation is required to be covered by a statute, an implied situation cannot be brought in by reading other provisions. Necessarily, the statute

or the regulation has to be read in proper perspective and of its true expressions rather than culling out. The present case is squarely covered by the situation and principles governing in ***Bhagirathi Jena v. Board of Directors, O.S.F.C*** (1 supra). In view of the same, we hold that in the absence of any specific provision, the appellant is not allowed to continue the disciplinary proceedings as rightly found by the learned Single Judge. Hence, we do not find any merits in the Writ Appeals.

Accordingly, all the three Writ Appeals are dismissed. No costs.

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(B.PRAKASH RAO, J)

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(D.APPA RAO, J)

14th March 2006

RRB

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